Sib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MACONDRAY & CO., INC., in its capacity as agent of the SS "TOREADOR",
Petitioner,

- versus - C.T.A. CASE NO. 2526

COMMISSIONER OF CUSTOMS,
Respondent.

2/6/78

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D E C I S I O N

When this case was called for hearing on May 30, 1977, after the trial had been twice postponed by the Court for non-appearance of the parties, the latter submitted the case for decision of the Court on the basis of the pleadings and the customs records. Under the well-settled rule that one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of the material and relevant allegations of the opposing party (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115), the parties are therefore considered to have rested their motion for judgment on their own allegations taken together as are admitted in the pleadings, or deemed admitted, including the customs records. However, the admission refers only to the allegations of fact and cannot be made to include conclusions of law. (Mercy's Inc. vs. Verde, L-21571, September 29, 1966, 18 SCRA 171.)

As alleged by petitioner in its petition for review and admitted by respondent in his answer, the relevant facts are as follows:

1. Petitioner is a corporation organized under the laws of the Philippines with office at Shurdut Building, Intramuros, Manila; petitioner is the ship-agent in the Philippines of the vessel SS "Toreador".

2. On February 7, 1967, the SS "Toreador" with Registry No. 226 arrived at the port of Manila and discharged her cargo thereat including seventy eight (78) rolls non-corrugated board.

3. On or about February 25, 1967, the Collector of Customs of Manila initiated Administrative Case No. V-110/67 against SS "TOREADOR" for alleged discrepancy in the actual weight and the weight declared in the Inward Cargo Manifest in violation of Section 1005 in relation to Section 2521 of the Tariff and Customs Code, alleging that the seventy eight (78) rolls non-corrugated board had an actual weight of 62,310 kilos.

4. Petitioner contended that there was a cleric cal error committed in the preparation of the manifest at the port of loading, in good faith; that the ship-ment described in the manifest consisted of seventy eight (78) rolls non-corrugated board weighing 6,234 kilos; that the actual weight of the seventy eight (78) rolls non-corrugated board was 62,310 kilos; that this clerical error was due to honest mistake, committed in

good faith and without any intention of violating customs laws.

5. On August 11, 1969, the Collector of Customs of Manila rendered a decision holding that SS "Toreador" conveyed unmanifested cargo consisting of the difference in the actual weight from the declared weight and imposed a fine of ₱1,000.00 against petitioner.

6. Within the time allowed by law, petitioner appealed the said decision to respondent Commissioner of Customs. On May 3, 1973, respondent Commissioner of Customs rendered a decision increasing the fine imposed by the Collector of Customs from ₱1,000.00 to ₱10,000.00.

In contending that the decision of respondent is erroneous, arbitrary and contrary to the evidence and the law, petitioner puts forward the following reasons:

1. The actual weight of the seventy eight (78) rolls non-corrugated board was not included in the manifest due to clerical error committed in good faith at the port of loading. There was no intention on the part of the SS "Toreador", its owners or agents, to violate the law or to carry unmanifested cargo into the Philippines or to defraud the government of duties on the cargo; the customs duties on the cargo was paid voluntarily by the consignee to the government after the amendment was approved, entered, and attached to

the original manifest of the SS "TOREADOR";

2. Section 1005 of the Tariff and Customs Code imposes a right on the part of the master, consignee or agent thereof to amend the original manifest when it is obvious that a clerical error or other discrepancy has been committed in the preparation of the manifest;

3. That the right to amend the original manifest is granted by law in order that the master, consignee or agent can correct the clerical error or discrepancy committed to conform with what was actually discharged and not merely to protect the interest of the importer;

4. An amendment to the inward manifest of the SS "Toreador" was actually filed with and approved by the Bureau of Customs and the same was entered and attached to the original manifest. This amendment cured any defect that existed in the manifest prior to the correction thereof and relieves the vessel and its agents from liability under Section 2521 of the Tariff and Customs Code;

5. The act of the Commissioner of Customs in increasing the fine to ₱10,000.00 is arbitrary, unjust and unreasonable inasmuch as there was clearly no intention on the part of the vessel to smuggle the goods. The amount of the cargoes supposedly unmanifested

is very insignificant and the fine imposed exceeds that what is provided for by laws.

As affirmative defenses, respondent however alleges that:

1. That 78 rolls non-corrugated board coated which arrived on board the S/S "Toreador", Reg. No. 226 and were discharged therefrom at the Port of Manila and declared in the Inward Cargo Manifest as weighing 6,234 kilos was discovered, upon actual examination to be weighing 62,310 kilos or a difference in weight of 56,076 kilos.

2. That the amendment of the manifest allowed by the Collector of Customs in this case is without prejudice to the administrative liability of the S/S "Toreador" and did not relieve the said vessel from her liability under the provisions of the Tariff and Customs Code, the rationale behind such allowance to amend the manifest being to protect innocent importers who are not parties to the vessel's negligence and was never intended as a loophole to which the shipowner could circumvent the law;

3. That the imposition of an administrative fine against the S/S "Toreador" is, under the circumstances, legal, valid and proper as provided for under Section 2523 of the Tariff and Customs Code.

The issue, therefore, is whether the imposition of the administrative fine of ₱10,000.00 against the SS "Toreador" is, under the circumstances, legal, valid and proper as provided for under Section 2523 of the Tariff and Customs Code.

Parenthetically, it should be stated that Section 2523 of the Tariff and Customs Code refers to discrepancy in the weight of an article or package as declared in the manifest, while Section 1005, in relation to Section 2521, also of the same Code, refers to a failure to supply the requisite manifest. (United States Lines Co. vs. Commissioner of Customs, CTA Case No. 2365, June 17, 1974; Smith, Bell & Co., Inc., vs. Commissioner of Customs, CTA Case No. 2469, December 27, 1974.) Since the offense involved in this case relates to the discrepancy in the actual weight and the weight declared in the Inward Cargo Manifest of the seventy eight (78) rolls non-corrugated board, and not to a failure to supply the manifest, as in fact there was an Inward Cargo Manifest, as stated by respondent, Section 2523 of the Tariff and Customs Code is the law involved in this case.

Section 2523 of the Tariff and Customs Code provides as follows:

> Sec. 2523.- Discrepancy Between Actual and Declared Weight of Manifested Article.- If the gross weight of any article or package described in the manifest exceeds by more than twenty per centum the gross weight as declared in the mani-

> fest or bill of lading thereof, and the Collector shall be of opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft, a fine of not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft.

The law says, "a fine of not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists, may be imposed upon the importing vessel or aircraft." When is the fine imposed? The same law gives the ready answer. It specifies: "If the gross weight of any article or package described in the manifest exceeds by more than twenty per centum the gross weight as declared in the manifest or bill of lading thereof, and the Collector shall be of opinion that such discrepancy was due to the carelessness or incompetency of the master or pilot in command, owner or employee of the vessel or aircraft." The emphasis is on the words - "If the gross weight of any article or package described in the manifest exceeds by more than twenty per centum the gross weight as declared in the manifest or bill of lading thereof." Accordingly, if the gross weight of any article or package described in the manifest does not exceed by more than twenty per centum the gross weight as declared in the manifest or bill of lading, a fine of not more than fifteen per centum of the value of the package or article in respect to which the deficiency exists may not be imposed upon the importing vessel or aircraft.

Here, in the case at bar, as stated in the decision appealed from (Annex "A" of the Petition for Review; also pp. 41-43, Customs records), the Entry Processing (Marine) Division of the Bureau of Customs discovered that the subject shipment weighed 62,310 kilos. The gross weight which was declared in the Bill of Lading (Exhibit "I", p. 9, Customs records) is 137,396 lbs. which is equivalent to 62,310 kilos. (Exh. "I-A", p. 9, Customs records.) Since the gross weight of the shipment in question as found by the Entry Processing (Marine) Division is equal to the gross weight as declared in the bill of lading thereof, there is clearly no discrepancy between the actual and declared weight of the shipment, much less an excess by more than twenty per centum punishable under Section 2523 of the Customs and Tariff Code. Consequently, the vessel SS "Toreador" or its agent, petitioner Macondray & Co. Inc., is not liable for the administrative fine imposed under Section 2523 of the Code.

It is true that as declared in the Inward Cargo Manifest, the subject shipment weighed 6,234 kilos. But Section 2523 of the Code states explicitly: "As declared in the manifest <u>or bill of lading</u>." The law seems clear and specific. It therefore calls for application as thus worded. There is no room for interpretation.

At any rate, as contended by petitioner (paragraph IV; Petition for Review) and admitted by respondent (paragraph 1 of the Answer), there was a clerical error committed in the preparation of the manifest at the port of loading (in the process of conversion from lbs. to kilos, as explained in page 4 of petitioner's memorandum), and this clerical error was due to honest mistake, committed in good faith and without any intention of violating customs laws. An amendment to the inward manifest of the SS "Toreador" was actually filed with, and approved by, the Bureau of Customs and the same was entered and attached to the original manifest.

The appealed judgment of respondent Commissioner of Customs raising the administrative fine of ₱1,000.00 imposed by the Collector of Customs of Manila to ₱10,000.00

on the vessel SS "Toreador" for alleged violation of Section 2523 of the Tariff and Customs Code cannot, therefore, stand. The provisions of Section 2523 provide the safest guide as to the statutory policy, to which obedience is due and from which deviation is not allowable. (See Padilla vs. City of Pasay, L-24039, June 29, 1968, 23 SCRA 1349.)

ACCORDINGLY, the decision appealed from should be as it is hereby reversed.

SO ORDERED.

Quezon City, February 6, 1978.

Amante Filler
AMANTE FILLER
Acting Presiding Judge

I CONCUR:

Roaquin
CONSTANTE C. ROAQUIN
Associate Judge